

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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| CHRISTOPHER E. LENHART, <i>Pro Se</i> , |) | Case No.: 1:15 CV 2440 |
| |) | |
| Petitioner |) | |
| |) | |
| v. |) | JUDGE SOLOMON OLIVER, JR. |
| |) | |
| WARDEN EVROS, |) | |
| |) | |
| Respondent |) | <u>ORDER</u> |

On November 25, 2015, Petitioner Christopher E. Lenhart (“Lenhart”) filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 (“§ 2254 Petition”) in the above-captioned case, challenging his convictions for burglary, kidnaping, failure to provide notice of change of address, and intimidation of a crime victim or witness. (Pet., ECF No. 1, at 1.) Lenhart sets forth three grounds for relief in his § 2254 Petition: (1) unlawful retroactive application of a statute; (2) ineffective assistance of counsel; and (3) a changed indictment in violation of the Grand Jury Clause. (*Id.* at 5,7-8.)

The court referred this case to Magistrate Judge James R. Knepp, II (“Judge Knepp”), pursuant to Local Rule 72.2, on December 29, 2015, for preparation of a Report and Recommendation (“R&R”). On April 7, 2016, Respondent Ronald Erdos (“Respondent”) filed a Return of Writ (ECF No. 10). On April 21, 2016, Petitioner filed a Traverse (ECF No. 11).

On February 6, 2017, Judge Knepp submitted an R&R, recommending that Lenhart’s § 2254 Petition be dismissed for being procedurally defaulted. (R&R at 10-21, ECF No. 13.) Specifically, Judge Knepp explained that Lenhart failed to properly and timely present his arguments for appeal in all of the appropriate levels of the Ohio state courts, and thus, failed to exhaust his state court

remedies. (*Id.*) Judge Knepp further found that Lenhart has not established cause and prejudice to excuse the default, nor has he shown that the alleged constitutional violation resulted in the conviction of an innocent individual. (*Id.*)

As of the date of this Order, Lenhart has not filed objections to the R&R. By failing to timely object, Lenhart waived the right to appeal this court's Order. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985). After careful review of Judge Knepp's R&R and all other relevant documents in the record, the court finds no clear error. *See Fed. R. Civ. P. 72(b)* advisory committee's note; *Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require the district court review of a magistrate[] [judge's] factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings.").

Thus, the court adopts as its own Judge Knepp's R&R. (ECF No. 13.) In the alternative, the court finds that, even upon *de novo* review, Magistrate Judge Knepp's findings are well taken, and adopts as its own his R&R for the reasons stated in the R&R.

Accordingly, the court hereby dismisses Lenhart's § 2254 Petition (ECF No. 1) for procedural default and enters judgment for Respondent against Petitioner. The court certifies that, pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed. R. App. P. 22(b); 28 U.S.C. § 2253(c) (2015).

IT IS SO ORDERED.

/S/ SOLOMON OLIVER, JR.
CHIEF JUDGE
UNITED STATES DISTRICT COURT

February 27, 2017